

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GEORGIA SOUTHWESTERN
RAILROAD, INC., a Corporation,

Plaintiff,

vs.

AMERICUS C. MITCHELL, JR.,
an Individual,

Defendant.

CASE NO. 2:06cv3-B

ANSWER TO AMENDED COMPLAINT

NOW COMES AMERICUS C. MITCHELL, JR., the defendant herein, by and through counsel of record, and answers the respective paragraphs of the plaintiff's complaint as follows:

I.

1. Admitted on information and belief.
2. Admitted.

II.

3. Denied. This defendant admits, on information and belief, that Plaintiff Georgia Southwestern Railroad, Inc. is incorporated in the State of Delaware and has its principal place of business in San Antonio, Texas. Defendant further admits that he is an

individual and a resident of Barbour County, Alabama. This defendant denies that venue is proper in the Northern Division of the Middle District of Alabama; rather, says that the proper venue in this action is the Eastern Division of the Middle District of Alabama. This defendant admits that the parties are diverse.

4. Denied. There is a *bona fide* dispute as to the proper measure of damages in this case. Should the issue terminate in favor of this defendant, the amount in controversy, most likely, will be less than \$75,000, exclusive of interest and costs.

III.

5. Denied.

6. Denied.

7. Denied.

COUNT I

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

COUNT II

- 14. Denied.
- 15. Denied.
- 16. Denied.
- 17. Denied.
- 18. Denied.
- 19. Denied.
- 20. Denied.
- 21. Denied.

AFFIRMATIVE DEFENSES

- 22. Not guilty.
- 23. This defendant denies each and every material allegation of the plaintiff's complaint, demands strict proof thereof, and pleads the general issue.
- 24. The plaintiff fails to state a claim upon which relief can be granted.
- 25. The plaintiff is not the real party in interest to prosecute this action as contemplated by Rule 17 of the *Federal Rules of Civil Procedure*.
- 26. This defendant says that, on the occasion made the basis of this suit, the plaintiff, Georgia Southwestern Railroad, Inc., a corporation, was guilty of or chargeable with negligence which proximately contributed to the injuries and damages alleged in the

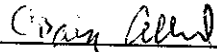
complaint and/or that said plaintiff knowingly assumed the risk of loss; hence, the plaintiff is not entitled to recover from this defendant.

27. This defendant says that the damages alleged by the plaintiff were due to acts, errors or omissions of others, which events constitute the cause in fact of the plaintiff's damages, which damages were not caused in whole or in part by any act, error or omission of this defendant.

28. This defendant denies any and all liability and/or allegations of wrongdoing, but says that between any act, error or omission allegedly committed by this defendant, there occurred an efficient intervening cause which constitutes the cause in fact of the plaintiff's damages; hence, the plaintiff is not entitled to recover hereunder.

29. The plaintiff failed to mitigate its damages.

30. Cost of replacement is not the proper measure of damages regarding the subject railroad trestle.



DAVID E. ALLRED
D. CRAIG ALLRED
Attorneys for Above-Named Defendant

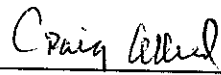
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CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of November, 2006 filed the foregoing *Answer to Amended Complaint* with the Clerk of the Court for the United States District Court for the Middle District of Alabama, Northern Division, using the CM/ECF system, which will send notification of such filing to:

Adrian D. Johnson, Esq.
PARNELL & CRUM, P.A.
Post Office Box 2189
Montgomery, Alabama 36102-2189



OF COUNSEL